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RICHMOND, FREDERICKSBURG & POTOMAC R. R. CO. v. JOHNSON.—Decided at Richmond, March 21, 1901.—*Harrison*, J:

1. APPEAL AND ERROR—*Roadways—Final orders—Code, sec. 3453.* An order of a county court appointing commissioners to ascertain what would be a just compensation for land proposed to be taken for a public road is not a final order, and no appeal lies from it. Sec. 3453 of the Code, which gives an appeal of right to any person who thinks himself aggrieved by an order in a controversy concerning a roadway, refers to a *final* order. *Jeter* v. *Board*, 27 Gratt. 920, criticised.

BAKER v. BRIGGS.—Decided at Richmond, March 21, 1901.—*Cardwell*, J:

1. DELINQUENT LANDS—*Application to purchase—Code, sec. 666, as amended.* The Act of February 11, 1898, amending sec. 666 of the Code (Acts 1897-8, p. 343), is constitutional. An applicant to purchase, however, under that act, must substantially comply with the terms of the act by offering to pay the amount required by law. If the application attempts to specify what the applicant will pay, it must cover everything required by the statute.

2. DELINQUENT LANDS—*Enjoining conveyance—Parties.* The clerk of the court of the county or corporation wherein land is situated is the representative of the State to receive the taxes due upon land sold for delinquent taxes and purchased by the State, whether from the owner or an applicant. He, and not the auditor, is the proper party to enjoin from receiving money from and making a deed to a proposed purchase from the commonwealth, and the statute conferring jurisdiction on the Circuit Court of the city of Richmond of all suits by or against the commonwealth has no application. The clerk is not only a proper but a necessary party to such a suit.

3. INJUNCTIONS—*Parties.* The common rule with reference to injunctions is that they will not be granted to restrain a person who is not a party to the suit; but whether granted in a *pending* suit or not, the person whose action is sought to be restrained must become a party to the bill or petition upon which the application is based.

4. DELINQUENT LANDS—*Insufficient application to purchase—Injunction—Mandamus.* A bill in ——— will lie to enjoin a clerk from receiving the money on an insufficient application to purchase delinquent land and from making a deed to the purchaser. In such case *mandamus* may not be an adequate remedy to compel a clerk to receive money tendered.

5. CHANCERY PRACTICE—*Bill—Amendment.* It is not error to allow a complainant in equity to amend his bill simply to introduce a new fact which does not render the case repugnant to the case originally stated.

6. ATTORNEY'S FEES—The amount of the attorney's fee to be taxed against the opposing party being regulated in certain suits in chancery by the amount in controversy, and this having been fixed by the trial court, this court will not disturb it in the absence of anything in the record to show error.